

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JULIE ELLEN NEWMAN and the
JULIE ELLEN NEWMAN REVOCABLE
LIVING TRUST U/A/D APRIL 24, 2006,

Plaintiffs,

v

Case No. 15-146394-CZ

Hon. Wendy Potts

ELAINE KAREN LIPSCHUTZ, KENNETH
LIPSCHUTZ, the ELAINE KAREN LIPSCHUTZ
REVOCABLE LIVING TRUST U/A/D APRIL 24,
2006, MALAK EQUITIES, LLC, QFD, LLC, and
JP MORGAN CHASE BANK, N.A.,

Defendants, et al.

OPINION AND ORDER

At a session of Court
Held in Pontiac, Michigan
On

OCT 9 2018

This matter is before the Court on JPMorgan's motion for summary disposition in its favor under MCR 2.116(C)(10) with respect to the claims in its cross-complaint against the Lipschutz Defendants for breach of contract (Count I) and enforcement of security agreement (Count III).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). When deciding a motion under MCR 2.116(C)(10), the Court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* If the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

JPMorgan first argues that it is entitled to summary disposition with respect to its breach of contract claim because the Lipschutz Defendants failed to pay the outstanding principal balance by the maturity date, which constitutes an event of default under the Amended Lipschutz Note. In addition, JPMorgan states that Amended Lipschutz Note contains a cross-default provision, which states that a default under Plaintiff's note constitutes a default under the Amended Lipschutz Note. In response, the Lipschutz Defendants argue that no cross-default exists with respect to the 2014 Lipschutz Note because JPMorgan gave no notice of default.

The parties refer to JPMorgan's Exhibit 14, which is a letter dated March 19, 2015, informing the Lipschutz Defendants that Plaintiffs had defaulted under their 2013 note. The Lipschutz Defendants argue that the notice of default is defective because it does not refer to a default under the 2014 Lipschutz Note, but only refers to a default under Plaintiffs' 2013 note. The Court concludes that the March 19, 2015 letter notified the Lipschutz Defendants of the default under Plaintiffs' note and, based on the admissions and the conduct of the parties throughout this case, as noted in JPMorgan's brief, there has never been any real factual dispute that the Amended Lipschutz Note was in default for failure to pay by the maturity date and that it was cross-defaulted upon a default under Plaintiffs' note. The Court therefore concludes that there is no genuine issue of material fact that an event of default occurred under the Amended

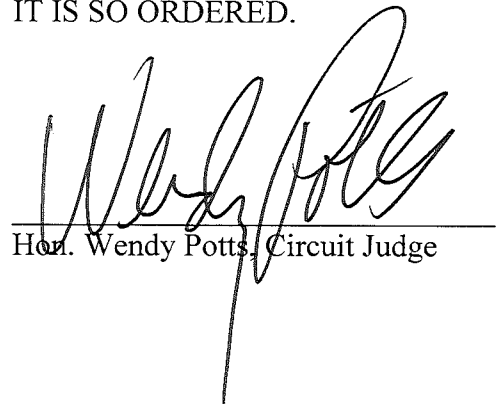
Lipschutz Note and that the Lipschutz Defendants were sufficiently notified of the default. Accordingly, JPMorgan is entitled to summary disposition of its breach of contract claim under MCR 2.116(C)(10).

JPMorgan next argues that it is entitled to summary disposition with respect to its claim for enforcement of the security agreement signed by the Lipschutz Defendants in September 2013. Under Section 10 of the security agreement, JPMorgan may take action “[i]f any Event of Default has occurred and is then continuing.” Because it is undisputed that an Event of Default has occurred, JPMorgan is entitled to proceed as permitted by the security agreement with respect to the collateral.

WHEREFORE, IT IS HEREBY ORDERED that JPMorgan’s motion for summary disposition with respect to the claims for breach of contract and enforcement of the security agreement is GRANTED.

IT IS SO ORDERED.

OCT 9 2018



Hon. Wendy Potts, Circuit Judge